IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 58 of 2001
(Old No. 1084 of 1999)

Smt. Shanti Devi W/o Bhupal Ram Arya
R/o Stainley Copmpound (Sher Kadada)
Mallital
Tehsil & District Nainital ... Appellant

Vs

1. Amarnath Shah S/o Sri Ram Lal Shah
2. Ashutosh Shah S/o Sri Amarnath Shah
   R/o Lal Bazar
   District Almora
   At present R/o 191 Bara Bazar
   Mallital, District Nainital ... Respondents

Sri Rajendra Dobhal, Learned counsel for the appellant
Sri Lalit Tiwari, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This second appeal has been preferred by the appellant against the judgment and decree dated 05.06.1999 passed by Additional Civil Judge, Nainital Civil Appeal No. 94 of 1995 arising out of the judgment and decree dated 09.11.1995 passed by Civil Judge (Junior Division), Nainital in Original Suit No. 58 of 1991 in Amarnath Singh & another Vs Smt. Santi Devi.

2. Brief facts of the case are that the plaintiff/respondents filed a suit before the Civil Judge (Junior Division), Nainital which was decreed vide judgment and decree dated 09.11.1995 in favour of the plaintiff/respondents. Defendant – Shanti Devi also filed a counter claim before the trial court which was partly allowed vide aforesaid judgment.

3. Feeling aggrieved by the aforesaid judgment and decree, the plaintiff/respondent preferred an appeal before the

first appellate court against the order passed in the counter claim and defendant Shanti Devi filed appeal against the judgment and decree passed in the Original Suit. The first appellate court dismissed the appeal of Shanti Devi vide judgment and decree dated 24.08.2006 and appeal against the counter claim was allowed.

4. Feeling aggrieved by the aforesaid judgment and decree, the defendant/appellant preferred this second appeal before the Allahabad High Court, which has been transferred to this Court after creation of separate State.

5. Heard Sri Rajendra Dobhal, learned counsel for the appellant, Sri Lalit Tewari, learned counsel for the respondents and perused the record.

6. Having considered the arguments advanced by the learned counsel for the appellant and after perusal of the evidence on record, I am of the view that, this second appeal is concluded by finding of facts, I, therefore, do not find any ground to interfere in the impugned judgments and orders passed by the courts below. Both the courts below have recorded justified and proper finding of fact which cannot be interfered at the stage of second appeal. I also do not find any substantial question of law involved in this case.

7. The second appeal lacks merit and is liable to be dismissed.

8. Accordingly, the second appeal is dismissed in-limine.

(B. C. Kandpal, J.)

28.11.2006
ASWAL